

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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AIR ALLIANCE HOUSTON, *et al.*,

*Petitioners,*

v.

U.S. ENVIRONMENTAL  
PROTECTION AGENCY, *et al.*,

*Respondents.*

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No. 19-1260 (and consolidated cases)

**UNOPPOSED MOTION TO CONTINUE ABEYANCE**

Respondents United States Environmental Protection Agency, *et al.* (collectively “EPA”), respectfully request that the Court (1) continue to hold these cases in abeyance while EPA completes a rulemaking that would result in changes to the regulations that are at issue in these cases; and (2) direct the parties to file motions to govern further proceedings in these cases by March 1, 2024. Petitioners and Respondent-Intervenors do not oppose the requested abeyance. Thus, this motion is unopposed.

1. These consolidated cases concern EPA’s 2019 “Risk Management Program” regulations promulgated at 40 C.F.R. Pt. 68, 84 Fed. Reg. 69,834 (Dec. 19, 2019) (“2019 Rule”), which rescinded in part and revised in part certain aspects of the Agency’s regulations published in January 2017, *see* 82 Fed. Reg. 4,594 (Jan. 13, 2017). The Risk Management Program regulations were issued under a

provision of the Clean Air Act that was designed to prevent and reduce the risk of accidental releases of hazardous chemicals. *See* 42 U.S.C. § 7412(r)(7). Petitioners challenge the 2019 Rule and EPA’s subsequent denial of petitions for administrative reconsideration of that rule; those challenges were consolidated. *See* DN1889619 (EPA motion of March 12, 2021 summarizing procedural history with docket citations).

2. Since March 2020, the Court has granted nine motions to hold these cases in abeyance.<sup>1</sup> As noted in prior motions, EPA is currently undertaking a rulemaking to reconsider the 2019 Rule. *See, e.g.*, DN1967110 at 2.

3. On August 31, 2022, EPA published in the Federal Register new proposed Risk Management Program regulations that, if adopted, would revise portions of the 2019 Rule. “Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Safer Communities by Chemical Accident Prevention.” 87 Fed. Reg. 53,556.

4. The rulemaking is nearing completion. As noted on the Office of Information and Regulatory Affairs’s website, <https://www.reginfo.gov/public/do/eoDetails?rrid=335764>, on September 25, 2023,

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<sup>1</sup> *See* DN2021554 (Oct. 12, 2023 Order); DN2005999 (June 30, 2023 Order); DN1967891 (Oct. 6, 2022 Order); DN1958663 (Aug. 10, 2022 Order); DN1903737 (June 24, 2021 Order); DN1890098 (March 16, 2021 Order); DN1874709 (Dec. 7, 2020 Order); DN1873534 (Nov. 30, 2020 Order); DN1864495 (Oct. 2, 2020 Order).

EPA submitted a draft Final Rule to the Office of Management and Budget for review pursuant to Executive Order 12866. As of the date of this filing, that process is ongoing.

5. In light of EPA's ongoing regulatory action, a further abeyance until March 1, 2024 is warranted. A continued abeyance would preserve resources for both the parties and the Court since revisions to the Risk Management Program regulations may obviate the need for judicial resolution of some, or all, of the disputed issues.

6. EPA thus requests that the Court continue to hold these cases in abeyance and set a new deadline of March 1, 2024, for motions to govern further proceedings.

Dated: January 30, 2024

Respectfully submitted,

/s/ Andrew S. Coghlan  
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**CERTIFICATE OF COMPLIANCE**

I hereby certify that this filing complies with the requirements of Fed. R. App. P. 27(d)(1)(E) because it has been prepared in 14-point Times New Roman, a proportionally spaced font. I further certify that this Motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains 466 words, excluding the parts of the motion exempted under Fed. R. App. P. 32(f), according to the count of Microsoft Word.

/s/ Andrew S. Coghlan  
Counsel for Respondents

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing Unopposed Motion for Continued Abeyance have been served through the Court's CM/ECF system on all registered counsel this 30th day of January, 2024.

/s/ Andrew S. Coghlan  
Counsel for Respondents